

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/072,504 05/04/98 HODOSH

M 760.1034

021831
STEINBERG & RASKIN, P.C.
1140 AVENUE OF THE AMERICAS
NEW YORK NY 10036

HM12/0301

EXAMINER

ROSE, S

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

03/01/00

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Claims corresponding to the claims of the Fischer patents may be allowable. However, due to a potential interference, ex parte prosecution is suspended for a period of six months from the mailing date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

The November 27, 1998 Petition to Make Special was granted on February 17, 1999 and on March 1, 1999 applicant submitted an IDS citing references "to be called to the Examiner's attention" and the Examiner cannot fail to notice that two of them, i.e.: Fischer U.S. 5,851,512 and Fischer 5,855,870 both filed earlier than applicant on May 30, 1997

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have recently issued on December 22, 1998 and January 5, 1999 and contain claims to substantially the same invention as the elected species, namely carboxypolymethylene. Applicant has failed to notify the PTO that the elected species correspond to the claims of the recently issued Fischer patents whose May 30, 1997 filing date clearly antedates applicant's May 4, 1998 filing date herein.

37 CFR 1.607(c) as set forth in MPEP § 2307.05, requires the applicant to identify the patent and the number of the patent claims when presenting a claim which corresponds substantially to a patent claim.

This has not been done here.

Claims 1-25 of this application have apparently been copied from a U.S. patent without being suggested by the Examiner. The patent number and the number of the copied claims have not been properly identified. 37 CFR 1.607(c).

Applicant is required to identify the patent and claim numbers and supply information explaining why a complete identification of the copied patent claims has not been presented. Following applicant's reply to this requirement, or the abandonment thereof, this application may be forwarded by the Examiner to the Office of the Assistant Commissioner

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of Patents for appropriate review, as noted under 37 CFR 1.607(c).

It has been suggested that the non-elected claims be held in abeyance pending a determination as to whether applicant, as a junior party, should present the showing of evidence, 37 CFR 1.608 set forth in MPEP § 2308, 2308.01 and 2308.02, since the Fischer patents cannot be overcome by presenting 37 CFR 1.131 declarations, but only through interferences.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shep Rose whose telephone number is (703) 308-4609. The examiner can normally be reached on Monday-Thursday from 7:30 A.M. to 6 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Cintins, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Shep Rose

Shep Rose
Senior Primary Examiner
Art Unit 1614

SKR:cdc
February 29, 2000

SHEP K. ROSE
PRIMARY EXAMINER
GROUP 1200